

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TABBITHA LYNN HOSSNER,

Plaintiff,

vs.

USCIS OMAHA FIELD OFFICE,

Defendant.

8:22CV336

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATION**

This case is before the Court on United States Magistrate Judge Michael D. Nelson's Findings and Recommendation that this case be dismissed without prejudice for failure of service pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. [Filing 5](#). No objections to the Findings and Recommendations have been filed.

The applicable standard of review for a magistrate judge's findings and recommendation depends upon whether timely objections have been filed. As the Eighth Circuit Court of Appeals has explained, "When a party timely objects to a magistrate judge's report and recommendation, the district court is required to make a de novo review of the record related to the objections, which requires more than merely reviewing the report and recommendation." [Gonzales-Perez v. Harper](#), 241 F.3d 633, 636 (8th Cir. 2001) (citing 28 U.S.C. § 636(b)(1), and [Jones v. Pillow](#), 47 F.3d 251, 253 (8th Cir. 1995)). On the other hand, neither the applicable statute, rule, nor case law requires the Court to conduct a de novo review of a magistrate judge's findings and recommendation when

no objections are filed. *See* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to.”); *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985) (explaining that nothing in § 636(b)(1) requires a district judge to apply some lesser standard of review than de novo when no objections are filed). Nevertheless, the Court deems it prudent to review the Findings and Recommendation at least for clear error. *See, e.g., Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting that when no objections are filed “[the district court judge] would only have to review the findings of the magistrate judge for clear error”). This Court finds no such clear error here.

Judge Nelson explained in his Findings and Recommendations that Plaintiff did not respond to an order to show cause why this case should not be dismissed pursuant to Rule 4(m) for failure to effect timely service; did not file any return or waiver of service; and did not request an extension of the service deadline. [Filing 5 at 1](#). Because Plaintiff was responsible for timely service, but he failed to effect such service even after being given the opportunity to show cause why he had not done so, Judge Nelson recommended that this case be dismissed without prejudice for failure of service pursuant to Rule 4(m). [Filing 5 at 1–2](#). The record amply supports Judge Nelson’s findings and recommendation.

Accordingly,

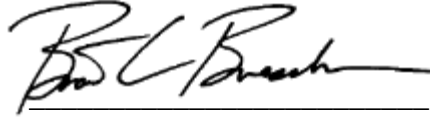
IT IS ORDERED that:

1. Magistrate Judge Michael D. Nelson’s Findings and Recommendation, [Filing 5](#), is accepted;

2. Plaintiff's Complaint, [Filing 1](#), is dismissed in its entirety without prejudice for failure of service pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Dated this 26th day of January, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge